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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM LAMONT ARNOLD,

Defendant and Appellant.

C086949

(Super. Ct. No. 17FE003337)

A jury convicted defendant William Lamont Arnold of robbery. The trial court found defendant had a prior strike conviction and sentenced him to 25 years in prison.

Defendant now argues (1) there is insufficient evidence of robbery because the underlying theft was by false pretenses, not larceny, and thus cannot support a robbery conviction, and (2) the matter should be remanded for resentencing in light of the passage of Senate Bill No. 1393.

We conclude substantial evidence supports the robbery conviction, but we will remand the matter to allow the trial court to exercise its discretion under Senate Bill No. 1393.

BACKGROUND

The victim testified at trial that he saw a computer on Craigslist that he was interested in buying. He communicated with the seller and agreed to meet at the seller's residence after dark. The victim met defendant in the driveway and walked with him to an open garage. He noticed the computer was older than advertised but offered to buy it and gave defendant money. Defendant then picked up the computer and told the victim he needed to get the charger from the house.

Eventually, the victim heard gunshots and saw a muzzle flash from defendant's gun. Defendant reentered the garage and pointed the gun at the victim's head. When defendant told him to get on the ground the victim fled the scene as the garage door started closing. He looked back and saw that defendant was still pointing the gun at him. The victim rejoined his wife, told her he had been robbed, and they drove to a place of safety before calling 911. The victim said he would not have left without either the computer or his money if defendant had not threatened him with the gun. The victim's wife largely corroborated her husband's account.

The jury convicted defendant of robbery (Pen. Code, § 211 -- count one)¹ and found true an enhancement that he personally used a handgun (§ 12022.53, subd. (b)). The jury found him not guilty of assault with a firearm (§ 245, subd. (a)(2) -- count two) and discharging a firearm in a grossly negligent manner which could result in injury or death (§ 246.3 -- count three), and it found not true other firearm enhancements associated with count one (§ 12022.53, subs. (a) & (c)). The trial court determined defendant had a prior strike conviction (§ 667) and sentenced him to an aggregate term of 25 years in prison, consisting of the following: 10 years for the robbery conviction,

¹ Undesignated statutory references are to the Penal Code.

10 years for the firearm enhancement, and five years for the prior serious felony conviction.

DISCUSSION

I

Defendant contends his conviction for robbery is not supported by substantial evidence because he committed theft by false pretenses, not larceny. We disagree.

“Robbery is defined as ‘the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.’ (Pen. Code, § 211.)” (*People v. Anderson* (2011) 51 Cal.4th 989, 994.) Reflected in this definition are elements of larceny. (*People v. Williams* (2013) 57 Cal.4th 776, 786.)

Most importantly for the purposes of our analysis, “a robbery can be accomplished even if the property was peacefully or duplicitously acquired, if force or fear was used to carry it away.” (*People v. Gomez* (2008) 43 Cal.4th 249, 256.) As the court explained in *Gomez*, a taking is not over at the moment the property is acquired; the taking continues through asportation. (*Ibid*, citing *People v. Anderson* (1966) 64 Cal.2d 633.) Here, defendant used force or fear to maintain control of the victim’s property and to prevent the victim from taking it back.

Defendant relies on *People v. Williams, supra*, 57 Cal.4th 776, but that case is distinguishable. The California Supreme Court determined in *Williams* that the defendant “had already acquired title” to the property in question, and thus he did not commit the required larceny to support a robbery conviction. (*Id.* at p. 787.) No such facts exist in this case. Defendant never acquired a right to keep *both* the computer and the victim’s money, but he used force and fear to maintain possession of both. That was robbery. (See *People v. Anderson, supra*, 64 Cal.2d 633, 638 [upholding robbery conviction where defendant obtained possession of a shotgun by posing as a purchaser, but then used the shotgun to effectuate the theft of the gun].)

II

Defendant seeks remand for resentencing in light of the passage of Senate Bill No. 1393 (2017-2018 Reg. Sess.) effective January 1, 2019, which amends section 667, subdivision (a) and section 1385, subdivision (b) “to give courts the discretion to dismiss or strike a prior serious felony conviction for sentencing purposes.” (*People v. Garcia* (2018) 28 Cal.App.5th 961, 965 (*Garcia*).) The People agree.

The amendments adopted by Senate Bill No. 1393 are available to all individuals whose judgments are not final as of the effective date (*Garcia, supra*, 28 Cal.App.5th at p. 973) and vest in the trial court the power to strike or dismiss a section 667, subdivision (a) enhancement “in the furtherance of justice.” (§ 1385, subd. (b)(1).) We will remand the matter to allow the trial court to exercise its discretion.

DISPOSITION

We remand to allow the trial court to exercise its sentencing discretion under section 667, subdivision (a) and section 1385, subdivision (b), as amended by Senate Bill No. 1393. The judgment is otherwise affirmed.

/S/
MAURO, J.

We concur:

/S/
BLEASE, Acting P. J.

/S/
HULL, J.